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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

-----X		
In re	:	Chapter 11
	:	
FISHERMAN'S COVE, INC.	:	Case No. 23-44696 (JMM)
	:	
Debtor.	:	
-----X		

**AFFIDAVIT OF DEAN MAFFEI IN SUPPORT OF LANDLORD'S MOTION FOR
ENTRY OF AN ORDER LIFTING THE AUTOMATIC STAY WITH RESPECT TO
LANDLORD'S INTERESTS, RIGHTS AND REMEDIES IN AND TO NON-
RESIDENTIAL REAL PROPERTY LOCATED AT 1126 EASTERN PARKWAY,
BROOKLYN, NEW YORK, A/K/A 279-287 UTICA AVE., BROOKLYN, NEW YORK**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, Dean Maffei, being duly sworn, depose and say:

1. I am over the age of twenty-one and am competent to testify regarding the matters in this affidavit. I am a citizen and resident of the State of New York.

2. I am currently the managing agent of 289 Utica LLC the current owner and landlord (the "Landlord") of the property located at 1126 Eastern Parkway, Brooklyn, New York, a/k/a 279-287 Utica Ave., Brooklyn, New York (the "Property") wherein Fisherman's Cove, Inc. (the "Debtor") operates. I make this Affidavit based upon my personal knowledge of the facts contained herein, and in support of the Landlord's *Motion for Entry of an Order Lifting*

*the Automatic Stay with Respect to Landlord's Interests, Rights and Remedies in and to Non-Residential Real Property Located at 1126 Eastern Parkway, Brooklyn, New York, a/k/a 279-287 Utica Ave., Brooklyn, New York (the "Motion").*¹

3. On June 1, 2023, the Landlord was awarded a judgment of possession (the "Judgment of Possession") against the Debtor, with execution of the same stayed until June 15, 2023. A true copy of the Judgment of Possession is attached hereto as **Exhibit A**.

4. On August 2, 2023, the Landlord and Debtor entered into a settlement stipulation (the "Settlement Stipulation")² resolving the First OSC, the terms of which were as follows:

- a. Landlord's Warrant of Eviction was stayed until 10/31/2023 for Debtor to pay all rent due as of 10/31/2023 or vacate the Property;
- b. The Warrant of Eviction is preserved; and
- c. Landlord claims that it as of 7/31/23 it is owed \$540,000.00 in rent and the Debtor claimed \$300,000.00 in rent was owed.

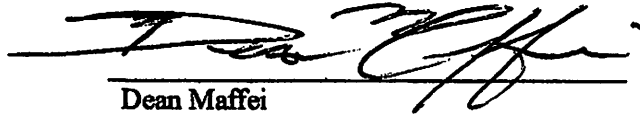
A true copy of the Settlement Stipulation is annexed hereto as **Exhibit B**.

5. On December 15, 2023, the Civil Court issued a decision and order (the "Eviction Order") wherein it denied the Second OSC, authorized the Landlord to re-notice the Warrant of Eviction and stated that the "Respondent (Debtor) has failed to provide a meritorious defense." A true copy of the Eviction Order is attached hereto as **Exhibit C**.

6. A Warrant of Eviction was in the hands of the Marshal and ready for execution upon the Debtor at the time of the filing of this Case.

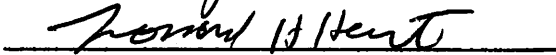
¹ Capitalized terms used, but not herein defined shall have the meaning ascribed to them in the Motion.

² The Settlement Stipulation was subsequently "So Ordered" by the Civil Court.


Dean Maffei

Sworn to before me this

9 day of Jan., 2024



Notary Public,

No.

Qualified in

Commission Expires

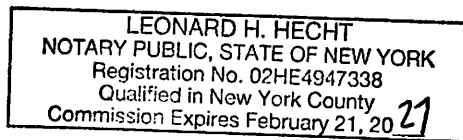


Exhibit A

**Kings County Civil Court
Landlord and Tenant Judgment**

Index Number: LT-312724-22/KI

Petitioner(s):
289 UTICA LLC

vs.

Respondent(s):
FISHERMAN'S COVE INC;
KIRK GIBSON

A Notice of Petition and Non-Payment Petition duly verified and proof of service having been filed with this court and the issue having been decided before Honorable Kevin C. McClanahan Housing Court Judge on June 01, 2023, a final order is made, due to failure to answer in favor of Petitioner: 289 UTICA LLC.

On Motion of: Gelfand Law Firm LLP
26 Court Street, Brooklyn, NY 11242

IT IS ADJUDGED:

That possession of the premises, described in the petition located at 1126 EASTERN PARKWAY, STORE, Brooklyn, NY 11213, said property is further described as: ALL ROOMS, be awarded to the petitioner(s).

The 9% post-judgment interest rate pursuant to NY CPLR §5004(a) applies.

Petitioner creditor(s) and address(es):
(1) 289 UTICA LLC, at 85-26 EDGERTON BLVD, Jamaica, NY 11432

Respondent debtor(s) and address(es):
(1) FISHERMAN'S COVE INC, at 1126 EASTERN PARKWAY, STORE, Brooklyn, NY 11213
(2) KIRK GIBSON, at 1126 EASTERN PARKWAY, STORE, Brooklyn, NY 11213

IT IS FURTHER ORDERED:

That a warrant of eviction shall issue removing all named respondents from the described premises. However, the issuance of the warrant is stayed per Stipulation/Order. Upon issuance of the warrant, the execution of the warrant is stayed per Stipulation/Order. The earliest date upon which execution may occur is 06/15/2023.

Date of Decision: 06/01/2023

Honorable Kevin C. McClanahan
Housing Court Judge

Judgment entered at Kings County Civil Court, 141 Livingston Street, Brooklyn, NY 11201, in the STATE OF NEW YORK in the total amount of **\$0.00 on 06/02/2023 at 11:06 AM.**

Judgment sequence 1



Alia Razzaq, Chief Clerk

Warrant issued to Marshal Justin P. Grossman on 6/2/2023

Section 5020(c) of the Civil Practice Law and Rules requires that a satisfaction be filed with the clerk when the judgment is satisfied. Failure to do so subjects the judgment creditor to penalties.



Civil Court of the City of New York
County of Kings Part _____
DECISION AND ORDER

289 UTICA LLC

Petitioner(s)

-against-

FISHERMAN'S COVE INC; KIRK GIBSON

Respondent(s)

=====

Decision and Order for entry of Judgment is rendered based upon respondents failure to answer as follows:

Judgment of possession of the premises 1126 EASTERN PARKWAY, STORE, Brooklyn, NY 11213, said property is further described as: ALL ROOMS is granted in favor of:

(1) 289 UTICA LLC

and against the following respondents determined to be in default:

(1) FISHERMAN'S COVE INC

(2) KIRK GIBSON

A money judgment is hereby granted in favor of:

(1) 289 UTICA LLC

and against

(1) FISHERMAN'S COVE INC

(2) KIRK GIBSON

In the amount of \$0.00 \$ _____

Plus Interest: ☐ None ☐ Clerk to compute from _____ ☐ Interest amount \$ _____

Plus Attorney Fees: ☐ None ☐ in the amount of \$0.00 \$ _____

Plus Costs and Disbursements: ☐ None ☐ calculated by Clerk ☐ in the amount of \$ _____

For a Total Amount of \$ _____

Use and Occupancy: ☐ None ☐ set at \$0.00 \$ _____ per month

Additional Decision Detail:

Warrant of Eviction is Stayed 0 days to and including _____

Execution of the Warrant is Stayed 0 days to and including 6/14/23

Decision Date: 6/1/23

EED: 6/15/23



Judge, Civil/Housing Court

Kevin C. McClanahan

Section 5020(c) of the Civil Practice Law and Rules requires that a satisfaction be filed with the clerk when the judgment is satisfied. Failure to do so subjects the judgment creditor to penalties.

Exhibit B

CIVIL COURT OF THE CITY OF NEW YORK

County of KINGS

Date 8/2/23 Part 52

Index No. L&T: 312 724/22
Page 1 of 1
Hon. INGA M. O'Neale

289 Utica LLC

Petitioner(s),

against

Fishum's Cove Inc
Respondent(s)

STIPULATION OF SETTLEMENT

The parties understand that each party has the right to a trial, the right to see a Judge at any time and the right not to enter into a stipulation of settlement. However, after review of all the issues, the parties agree that they do not want to go to trial and instead agree to the following stipulation in settlement of the issues in this matter.

29 HS

Party (please print)

Added/Amended
or Deleted

Appearance

No Appearance

No Answer

Petitioner 289

Respondent 1 Fishum's Cove

Respondent 2 Kurt Gibson

Respondent 3

① Respondent's OTSC is granted to be fully extended
② Warrant of eviction is stayed to 10-31-23 for Request to pay all rent due thru 10-31-23 or vacate.

③ Warrant of eviction may be preserved

④ Petitioner claims that from 7/31/23 \$540,000.00 ^{is owed} Breakeven has been uploaded to NYSCEF. Respondent ~~may~~ disputes said sum and claims that at least but admits that ^{300k} ^{owed} is

⑤ In the event Respondent vacates as above Petitioner may retain security deposit

[Signature]
Atty for L

[Signature]
Resp. Atty's

ENTER:
[Signature]
Hon. Inga M. O'Neale
Judge, Civil Court

Exhibit C

Civil Court of the City of New York
County of KINGS
Part 52

Index Number 312724/22
Motion Cal. # 1 Motion Seq. # 2

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show Cause and Affidavits Annexed.....	<u>1-1</u>
Answering Affidavits	<u>1</u>
Replying Affidavits.....	_____
Exhibits <u>None</u> <u>A-d</u>	_____
Other.....	_____

Claimant(s)/Plaintiff(s)/Petitioner(s)
against

Fisherman's Cove LLC
Kirk Gibson
Defendant(s)/Respondent(s)

Upon the foregoing cited papers, the Decision/Order on this Motion to STAY The

eviction

is as follows:

Respondent's OSC is denied in its entirety. Respondent has ~~failed~~ RE-mailed to provide a meritorious defense, and REASONABLE GROUNDS warrant may execute after RE-mailing of marshal's notice, ED 12-11-2023.

Edward Harold King, Judge
Civil Court-Kings County

12/6/23
Date

Ed King
Judge, Civil Court

Edward Harold King, Judge
Civil Court-Kings County